

Current Intelligence

■ Africa and counterfeit pharmaceuticals in the times of COVID-19

OECD/EUIPO (2020), *Trade in Counterfeit Pharmaceutical Products, Illicit Trade*, OECD Publishing, Paris, <https://doi.org/10.1787/a7c7e054-en>

At a time where counterfeit and substandard medications and critical medical supplies, such as hand sanitizers and face masks, are flooding the world market due to the COVID-19 pandemic, the 2020 report from the Organisation for Economic Co-operation and Development and the European Union Intellectual Property Office on ‘Trade in Counterfeit Pharmaceutical Products’ finding that trade in falsified medicine reached USD 4.4 billion in 2016, threatening public health and safety, while enriching criminals and organized crime, is very timely.

Legal context

This is one of many reports jointly published by the Organisation for Economic Co-operation and Development/European Union Intellectual Property Office to provide empirical data about the plague of counterfeit and pirated products to policy makers and stakeholders (for all reports, see here <https://tinyurl.com/yxysjtkts>).

Facts

With high-profit margins, low risks of detection and prosecution, weak penalties and trusting consumers, no wonder criminals and organized crime groups are entering the market of fake pharmaceuticals. The report shows that no medication is spared with counterfeiters producing fake antibiotics, pain killers, HIV/AIDS, cancer and diabetes treatments among others. In 2016, international trade in counterfeit pharmaceuticals thus reached USD 4.4 billion, causing economic damage to the pharmaceutical sector, while also posing significant health risks to consumers. The main producer countries of fake medicines are China and India, while the United Arab Emirates, Singapore and Hong Kong (China) serve as transit economies.

Through their marketing efforts, counterfeiters have successfully penetrated even closely monitored supply chains. In developing countries, including African states, where regulators and producers are often less active, the challenge to counter fake pharmaceuticals is particularly high.

Analysis

Africa with the highest prevalence (18.7 per cent) of falsified and substandard medicines (page 31) is particularly at risk from counterfeit medical supplies and fake

coronavirus ‘cures’. Already, in the first week of April 2020, Cameroon seized fake chloroquine, a much-touted possible remedy to the COVID-19, from at least 300 pharmacies and hospitals. This followed a World Health Organization notification that counterfeit chloroquine was circulating in Cameroon, Chad and Nigeria (<https://www.voanews.com/science-health/coronavirus-outbreak/cameroon-seizes-fake-coronavirus-drugs-sold-scammers>).

Already in March, in Uganda, a father and daughter duo were arrested for administering a fake vaccine against the coronavirus (<https://www.the-star.co.ke/news/world/2020-03-10-ugandans-arrested-for-giving-fake-coronavirus-vaccine/>). Fear of the virus and the inability to verify the authenticity of products are pushing the African population towards fake and substandard pharmaceuticals products and medical supplies obtained from unreliable sources. This trend, which will have a dramatic effect on the health of the population, will go unabated until a vaccine or effective remedy is found.

While effective enforcement is paramount to ensure that consumers are not victims of counterfeit products, enforcement is the weak link. The report highlights as a push factor behind the availability of counterfeit pharmaceutical, the low level of enforcement. In 2018, Egypt made *one* arrest of individuals engaged in the manufacturing of counterfeit medicines. This single arrest was enough to place Egypt in the top 10 countries, which therefore says a lot on the number of arrests in other countries around the world (page 39)!

At the same time, and this is perhaps less known, some states in Africa are also origin countries for counterfeit pharmaceuticals. Among the top 16 provenance economies for falsified medicine traded worldwide for the period 2014–2016 based on global customs seizures, two are African states, Egypt and Seychelles (page 34). The same two countries are highlighted as top provenance countries for imported counterfeit pharmaceuticals in the European Union (page 35). For the same period, the General Trade-Related Indices, which ranks economies as per the likelihood of being economy of provenance for counterfeit pharmaceuticals, highlights Egypt and Cameroon as the two African economies (page 36). Those African states are transit points rather than producing economies.

Among the factors which influence the supply chain, the report highlights the presence of free trade zones (page 50). The use of free-trade zones has facilitated and boosted trade in counterfeit pharmaceuticals, providing a venue for packaging and repackaging products in ways that effectively disguise their true origin. There is currently at least one free-trade zone in 31 of the 54 African states and in 2018, Djibouti launched the first phase of Africa’s biggest free-trade zone which shall span 4800 hectares. Djibouti has a strategic position on one of the world’s busiest

maritime commerce routes, linking Asia, Africa and the Middle East. It is, therefore, primordial for the protection of the consumers in Africa that laws are passed which permit effective policing of free-trade zones. The willingness to encourage trade, employment and foreign direct investment cannot be used against the health of African consumers. Free-trade zones cannot be lawless zones. It is commendable that Mauritius which has a well-established free-trade zone amended its legislation in 2019 to allow customs to enforce the law within the free-trade zone. Djibouti, which has a modern IP law framework, also explicitly states at Article 200 of its Customs Code that the legislation regarding IP rights is applicable within the free-trade zone.

At the same time, counterfeit pharmaceuticals have infiltrated the supply chain. The police and other enforcement bodies should thus be monitoring with more determination the distribution and sale of counterfeit goods on the local markets. In Comoros, for example, when the police arrest a hawker illegally selling falsified medicines, the police do not seize the fake medicines and the hawker is liable only to a fine. While this comes from an understanding by the police of the low-purchasing power of the inhabitants, such leniency does not benefit the population and lays more pressure on the public health system to respond to health problems caused by counterfeits. It is not only important to look at street markets but also beyond and to investigate what might at first glance seem innocuous. In Ghana, antimalarial tablets distributed in a rural dispensary and brought from a licensed wholesaler were found to contain less than 2 per cent of the expected active ingredients. The licensed wholesaler had purchased falsified medicines

from a travelling salesman operating from the back of a truck (page 49). There are numerous points in the supply chain where counterfeit pharmaceuticals products may enter either due to greed or simple carelessness. The ability to verify the authenticity of certain products quickly and cheaply, such as through mobile technology and short message service (SMS) or text identification, is part of the answer. Not only does such a method protect consumers but it also provides rights holders and enforcement agencies with timely information on the availability and movement of counterfeits. Such information allows for more targeted and effective enforcement actions.

Practical significance

Counterfeit pharmaceuticals have wide-ranging negative effects: companies, governments and the consumers are all negatively affected. While negative impacts such as the health and life of the consumer and the loss of revenue to companies are well known, counterfeit pharmaceuticals also have pernicious effects such as a loss of confidence in medications and the public health system. Understanding the cause, the routes and the players involved in this traffic is necessary for all stakeholders to propose well-thought enforcement mechanisms.

Marius Schneider and Nora Ho Tu Nam

IPvocate Africa Legal Advisers Ltd

Email: office@ipvocateafrica.com

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